IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MFA.No. 595 of 2002(B)

OPMV.2810/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: PETITIONER

SHRI C.V.MATHAI, S/O.VARGHESE,
AGED 41 YEARS, CHAMAKALAYIL HOUSE,
VETTICKAL P.O., MULANTHURUTHY-VIA.

BY ADV. SRI.SUNU P.JOHN
SRI.P.K.MURALEEDHARAN
SRI.C.DEVANAND

RESPONDENTS: RESPONDENTS

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1. SHRI K.I.ABDULKARIM, S/O.K.P.IBRAHIM,
KIZHAKKEKARA HOUSE, KAKANADU,
ERNAKULAM DISTRICT.

2. SHRI SHALVI, S/O.RAGHAVAN,
CHIRACKAPADY HOUSE, NEAR K.R.R.COMPANY,
KOLLAMKODIMUGHAL DESOM, KAKANADU,
ERNAKULAM DISTRICT.

3. THE UNITED INDIA INSURANCE COMPANY
LIMITED, ERNAKULAM BRANCH NO.4, JOS TRUST
BUILDING, CHITTOOR ROAD, COCHIN-35.

R3 BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR
R2 BY ADV. SHRI P.RAVINDRANATH

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.595 of 2002

Dated, this the 20th day of November, 2007

JUDGMENT

The petitioner in O.P.(MV) No.2810/1997 on the file of the Motor Accidents Claims Tribunal, Ernakulam is the appellant. Appellant is challenging the quantum of compensation awarded to him. He filed the Original Petition claiming compensation alleging that he sustained injuries in a motor vehicle accident occurred on 28.5.1997. It was averred that the appellant was riding his scooter and when he reached the place of accident a car bearing registration No.KLA 5847 driven by the second respondent came in a rash or negligent manner and hit against the scooter causing injuries to him. It was also averred that immediately after the accident he was taken to RCM Hospital and thereafter to Medical Trust Hospital and treated as inpatient. Appellant claimed an amount of Rs.1,00,000/- as compensation alleging that the accident occurred due to the negligence of the driver of the car. Owner and driver did not file written statement. Insurer alone filed written statement contending that the accident occurred due to the negligence of the appellant. Quantum of compensation claimed was disputed. Tribunal found that the accident occurred due to the negligence of the driver of the car and appellant is entitled to get compensation. Tribunal awarded a compensation of Rs.27,500/- to the appellant. Dissatisfied

with the quantum of compensation this appeal is filed by the petitioner.

2. Learned counsel appearing for the appellant has argued that the Tribunal did not consider the injuries sustained by the appellant. In paragraph 12 of the award the Tribunal had noted the injuries sustained to the appellant. According to the appellant in addition to the injuries noted the very same document will show that the appellant sustained fracture roof forbit on right side of head involving frontal sims. It is argued that for three days he was lying unconscious and the Tribunal did not consider the effect of brain injury and its impact. Since the Tribunal has not considered all the injuries sustained by the appellant while fixing the quantum of compensation I am of the view that the case is to be remanded to the Tribunal for re-fixing the quantum of compensation alone.

In the result, appeal is allowed in part. The findings of the Tribunal that the accident occurred due to the negligence of the driver of the car and the appellant is entitled to get compensation are confirmed. The finding that the insurer is liable to pay compensation is also confirmed. But the question of compensation awarded is set aside and the case is remanded for re-determining the quantum of compensation alone. Tribunal is directed to take O.P.(MV) No.2810/1997 back to file and re-determine the quantum of compensation after giving an opportunity to the parties to adduce additional evidence, if any. Parties shall appear before the Tribunal on 18.1.2008. Being an old case the Tribunal

shall make every endeavour to dispose of the case as expeditiously as possible.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.595 of 2002

JUDGMENT

20th November, 2007.